Michael J. O'Neill *Legislative Service Commission*

Am. S.B. 142

123rd General Assembly
(As Passed by the General Assembly)

Sens. **Spada, Oelslager, Cupp, Carnes, Drake, Latta, Prentiss, Watts, Mumper, White, Gardner, DiDonato, Kearns, Armbruster**

Reps. **Womer Benjamin, Jones, Callender, Logan, DePiero, Myers, Willamowski, Amstutz, Grendell, Buehrer, A. Core, Brading, Verich, Sullivan, Allen, Sulzer, Boyd, Coughlin, Clancy, Corbin, Perry, Thomas, Flannery, Distel, Ogg, Hoops, Roman, Jerse, Hartnett, Vesper, Schuring, Peterson, Metelsky, Cates, Trakas, Goodman, Calvert, Terwilleger, Stapleton, Austria, Kilbane, Gooding, Krupinski, Salerno, D. Miller, Maier, Aslanides, Damschroder, Barrett, Olman, Jolivette, Barnes, Ford, Patton, Wilson, Buchy**

Effective date: February 3, 2000

ACT SUMMARY

- Requires the sentencing court to impose a mandatory prison term on an offender convicted of felonious assault, aggravated assault, or assault when the victim of the offense is a peace officer who suffers serious physical harm as a result of the offense.
- Explicitly requires a judge or magistrate, and not a clerk of court, to set bail in any case involving a charge of felonious assault, aggravated assault, and assault when the victim of the offense is a peace officer.

CONTENT AND OPERATION

Mandatory prison terms for assaulting a peace officer

Continuing law--general felony sentencing

The Criminal Sentencing Law specifies that, *unless a mandatory prison term is required*, a court that sentences an offender for a felony has discretion to determine the most effective way to comply with the Criminal Sentencing Law's principles and purposes of sentencing and that, in exercising that discretion, the court must consider specified "seriousness factors" and "recidivism factors."

When a mandatory prison term is not required for a convicted felon, the sentencing court, after considering the Criminal Sentencing Law's principles, purposes, and factors, and in accordance with certain "guidance" provided for felony sentencing, has discretion to impose either a prison term or a sentence consisting of one or more community residential sanctions, nonresidential sanctions, or financial sanctions (collectively, these types of sanctions are referred to as "community control sanctions"). The duration of all community control sanctions so imposed cannot exceed five years. (R.C. 2929.12(A), 2929.15(A) to (C), 2929.16, 2929.17, and 2929.18.)

The Criminal Sentencing Law requires a court sentencing a convicted felon for certain felonies to impose a mandatory prison term and generally takes away the court's discretion to impose most other types of sanctions. When a mandatory prison term is required, the court cannot reduce the prison term pursuant to any provision of law other than when a judicial release is permitted or when the prison term is a term of life imprisonment and parole is authorized for the offense. (R.C. 2929.13(F).)

The offenses for which a mandatory prison term is required are (R.C. 2929.13(F)(1) to (10)): (1) aggravated murder when death is not imposed or murder, (2) rape, regardless of the circumstances involved, or an attempt to commit rape by force when the victim is under 13, (3) gross sexual imposition or sexual battery, if the victim is under 13, if the offender previously was convicted of or pleaded guilty to rape, the former offense of felonious sexual penetration, gross sexual imposition, or sexual battery, and if the victim of the previous offense was under 13, (4) aggravated vehicular homicide, vehicular homicide, or aggravated vehicular assault when it is a felony and when the section containing the offense requires a prison term, (5) a first, second, or third degree felony drug offense for which the drug law requires a mandatory prison term, (6) any first or second degree felony that is not described in clause (1) to (4), if the offender previously was convicted of aggravated murder, murder, any first or second degree felony, or an offense under an existing or former law of any jurisdiction substantially equivalent to one of those offenses, (7) any felony, other than carrying a concealed weapon, if the offender had a firearm while committing the felony, with respect to a portion of the sentence imposed pursuant to a "firearms specification" for having the firearm, (8) corrupt activity, when the most serious offense in the pattern of corrupt activity that is the basis of the offense is a felony of the first degree, (9) any sexually violent offense for which the offender also is convicted of a sexually violent predator specification included in the document charging the sexually violent offense, and (10) illegal conveyance of weapons onto the grounds of a detention facility or mental retardation and developmental disabilities institution or illegal conveyance of drugs of abuse onto the grounds of a detention facility or mental retardation and developmental disabilities institution,

if the offender is a Department of Rehabilitation and Correction officer or employee.

If the law requires a mandatory prison term for a convicted felon, the sentencing court cannot impose a community control sanction on the offender and must select and impose on the offender a specific prison term from the applicable range of prison terms provided for the degree of the offense. In addition to the mandatory prison term, the court may impose a financial sanction upon the offender. The sentence the court imposes on the offender cannot impose an unnecessary burden on state or local government resources. (R.C. 2929.13(A), 2929.14(A), and 2929.15(A).)

Continuing law--assault offenses and their penalties

Felonious assault. R.C. 2903.11 sets forth the offense of "felonious assault" and prohibits a person from knowingly: (1) causing serious physical harm to another or to another's unborn, or (2) causing or attempting to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance. The offense generally is a felony of the second degree, but if the victim of the offense is a "peace officer" (see **COMMENT**), it is a felony of the first degree.

Aggravated assault. R.C. 2903.12 sets forth the offense of "aggravated assault" and prohibits a person, while under the influence of sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force, from knowingly: (1) causing serious physical harm to another or to another's unborn, or (2) causing or attempting to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance. The offense generally is a felony of the fourth degree, but if the victim of the offense is a peace officer, it is a felony of the third degree.

Assault. R.C. 2903.13 sets forth the offense of "assault" and prohibits a person from: (1) knowingly causing or attempting to cause physical harm to another or to another's unborn, or (2) recklessly causing serious physical harm to another or to another's unborn. The offense generally is a misdemeanor of the first degree, but:

(1) It is a felony of the fifth degree if: (a) the offense occurred in or on the grounds of a state correctional institution, an institution of the Department of Youth Services, or a local correctional facility and specified criteria apply regarding the victim and the offender, (b) the offense occurred off the grounds of a state correctional institution, off the grounds of a Department of Youth Services institution, and off the grounds of a local correctional facility and specified criteria

apply regarding the victim and the offender, (c) the victim of the offense is a school teacher or administrator or a school bus operator, and specified criteria apply regarding the victim.

(2) It is a felony of the fourth degree if the offense is committed by a caretaker against a functionally impaired person under the caretaker's care, except that it is a felony of the third degree in specified circumstances.

(3) It is a felony of the fourth degree if the victim of the offense is a peace officer, a firefighter, or a person performing emergency medial service who is in the performance of the victim's official duties.

Sentencing. If a person is convicted of one of the above-described assault offense in circumstances in which it is a felony, the court has "guided" discretion in determining the sentence to impose, as described above in "***Continuing law--general felony sentencing***." The court may impose either (1) a prison term or (2) one or more community residential sanctions or nonresidential sanctions of a duration not exceeding five years. In either case, the court may impose a financial sanction. (R.C. 2929.13 to 2929.18.)

Operation of the act

The act modifies the penalty provisions for the offenses of felonious assault, aggravated assault, and assault, in certain circumstances when the victim of the offense is a peace officer. Under the act:

(1) For felonious assault, if the victim of the offense is a "peace officer" and if the victim suffered "serious physical harm" (see **COMMENT**) as a result of the commission of the offense, the offense is a felony of the first degree (continuing law), and the court is required to impose as a mandatory prison term (new) one of the prison terms prescribed for a felony of the first degree (one, two, three, four, five, six, seven, eight, nine, or ten years). The continuing penalty is retained if the peace officer victim did not suffer serious physical harm. (R.C. 2903.11(B) and 2929.13(F)(4).)

(2) For aggravated assault, if the victim of the offense is a peace officer and if the victim suffered serious physical harm as a result of the commission of the offense, the offense is a felony of the third degree (continuing law), and the court is required to impose as a mandatory prison term (new) one of the prison terms prescribed for a felony of the third degree (one, two, three, four, or five years). The continuing penalty is retained if the peace officer victim did not suffer serious physical harm. (R.C. 2903.12(B) and 2929.13(F)(4).)

(3) For assault, if the victim of the offense is a peace officer and if the victim suffered serious physical harm as a result of the commission of the offense, the offense is a felony of the fourth degree (continuing law), and the court is required to impose as a mandatory prison term (new) one of the prison terms prescribed for a felony of the fourth degree that is at least 12 months in duration (12, 13, 14, 15, 16, 17, or 18 months). The continuing penalty is retained if the peace officer victim did not suffer serious physical harm. (R.C. 2903.13(C)(3) and (4) and 2929.13(F)(4).)

Setting of bail for assaulting a peace officer

Prior law

R.C. 2937.23 provides that:

(1) In a case involving a felony, the judge or magistrate must fix the amount of bail;

(2) In a case involving a misdemeanor or a violation of a municipal ordinance and not involving a felony, the judge, magistrate, or clerk of the court may fix the amount of bail and may do so in accordance with a schedule previously fixed by the judge or magistrate. If the judge, magistrate, or clerk of the court is not readily available, the sheriff, deputy sheriff, marshal, deputy marshal, police officer, or jailer with custody of the person charged may fix the amount of bail in accordance with a schedule previously fixed by the judge or magistrate and must take the bail only in the county courthouse, the municipal or township building, or the county or municipal jail.

(3) In all cases, the bail must be fixed with consideration of the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of the defendant appearing at the trial of the case.

Operation of the act

The act modifies the bail-setting provisions described above to require, in any case that involves a charge of the offense of felonious assault, aggravated assault, or assault when the victim of the offense is a peace officer, the judge or magistrate, and not the clerk of court, must fix the amount of bail. The prior provisions regarding the use of a bail schedule do not apply. As under prior law, in all cases, the bail must be fixed with consideration of the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of the defendant appearing at the trial of the case. (R.C. 2937.23(A)(1) to (3) and (C).)

COMMENT

As used in the act:

(1) "Peace officer includes (R.C. 2935.01--not in the act): a sheriff, deputy sheriff, marshal, deputy marshal, member of the organized police department of any municipal corporation, including a member of the organized police department of a municipal corporation in an adjoining state serving in Ohio under contract, member of a police force employed by a metropolitan housing authority, member of a police force employed by a regional transit authority, state university law enforcement officer, Department of Public Safety liquor control investigator or food stamp trafficking agent, Department of Natural Resources employee who is a natural resources law enforcement staff officer, a forest officer, a preserve officer, a wildlife officer designated, a park officer, or a state watercraft officer, individual designated to perform law enforcement duties by a township park district, board of park commissioners, or a board of directors of a conservancy district, Ohio veterans' home policeman, police constable of any township, and police officer of a township or joint township police district, and, for the purpose of arrests within those areas, and for the purposes of the State Highway Patrol Law, and the filing of and service of process relating to those offenses witnessed or investigated by them, includes the Superintendent and troopers of the State Highway Patrol.

(2) "Serious physical harm to persons" means any of the following (R.C. 2901.01--not in the act): (a) any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment, (b) any physical harm that carries a substantial risk of death, (c) any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity, (d) any physical harm that involves some permanent disfigurement, or that involves some temporary, serious disfigurement, or (e) any physical harm that involves acute pain of such duration as to result in substantial suffering, or that involves any degree of prolonged or intractable pain.

(3) "Physical harm to persons" means any injury, illness, or other physiological impairment, regardless of its gravity or duration (R.C. 2901.01--not in the act).

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	05-13-99	p.	430
Reported, S. Judiciary	06-10-99	p.	566
Passed Senate (31-2)	06-15-99	pp.	598-599
Reported, H. Criminal Justice	10-13-99	p.	1267
Passed House (94-0)	10-20-99	p.	1304

99-SB142.123/rss